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The Special Counsel

January 27, 2006

The Hon. John Conyers
Ranking Member
House of Representatives
Committee on the Judiciary
Washington, D.C. 20515

Re: OSC File No. HA-05-2069

Dear Representative Conyers:

I apologize for the delay in responding to your April 13, 2005 and September 27, 2005 letters regarding how OSC processes Hatch Act complaints.

The initial handling of the former Agriculture Secretary Ann Veneman's case (above referenced case) was fairly typical of cases handled in the Hatch Act Unit (HAU) and not politicized at all. Each investigation and prosecution is conducted on an individual case-by-case basis. When a full investigation is required, due to the merits of the case, the investigation and the substantive prosecutorial decisions may take anywhere from one to three years. We are currently in the process of shortening this time frame by our backlog reduction efforts and overall Reorganization.

Consistent with the practices of previous Special Counsels, there is a priority system in place for Hatch Act complaints related to high level Executive Branch employees or congressional inquiries. These are normally brought to my attention, not to politicize matters but to make sure I'm aware of them. As you know, 2004 was a very busy election year and we received thousands of inquiries and hundreds of formal complaints. The HAU has a longstanding reputation for professional, thorough and unbiased investigations. The Unit should not be used as a political weapon during a busy election season.

Any fair review of the HAU would show that it is a model of non-partisan enforcement of the law. Indeed, if you look at what OSC has prosecuted since my arrival last January, you will find numerous cases that have been settled or filed at the Board (the Merit Systems Protection Board), against individuals that identify themselves as Republicans, Democrats, Green Party members, when the HAU has recommended such action.

Unfortunately, I never received your correspondence and was unaware of it, until it was brought to my attention recently. I have learned that when OSC received your complaint about former Secretary Veneman last Fall, it was inadvertently attached to another complaint and was not discovered until June 2005. We had an internal investigation of what happened. Based on

what I know, there was no intention to delay or prevent any investigation. I was totally unaware of this instance and have now taken the proper steps to ensure that it does not happen again.

Upon discovery, the matter was immediately assigned to an attorney within the HAU pursuant to regular procedures. Considering OSC's normal investigation and prosecution time frame and sequence, this inadvertent deviation had no bearing on the outcome of the complaint. Secretary Veneman resigned from the administration shortly after you sent the letter and long before OSC would have been able to complete an investigation of your complaint. Please keep in mind, the Hatch Act does not prohibit an employee appointed by the President, by and with the advice and consent of the Senate (PAS), from engaging in political activity while on duty, provided the costs associated are not paid for by money derived from the U.S. Treasury. In such cases, if an investigation for a violation is done and if the facts are warranted, a recommendation to the President for disciplinary action may be made.

It has long been the policy of OSC not to investigate or prosecute cases when a federal employee leaves federal service, which was the case here. I did not change that policy on my arrival at OSC. In fact, you received a letter from the HAU informing you of this policy and that OSC would take no further actions in regard to this complaint. Now that I have been fully briefed on the law and facts of this case, and also considering our own mistake inadvertently attaching this to another case, I have reconsidered this position on this case. I will instruct the HAU to conduct the necessary investigation to determine whether any funds should be reimbursed to the federal treasury. I do this to avoid the appearance of impropriety. We will follow normal OSC procedures. In following the advice of my professional career staff, the HAU will be in contact with your office to obtain more information so that the investigation can proceed.

You also raise questions about the handling of the Condoleezza Rice case and a case in which it is alleged John Kerry conducted a partisan campaign event at the Kennedy Space Center. You initially made these allegations regarding Condoleezza Rice within days of the November, 2004 general election. You claimed that the speeches of Ms. Rice were in violation of the Hatch Act. Your letter of April 13, 2005, cites a Complaint that argues that OSC's handling of the case was slow and not handled by the career staff. Nothing could be further from the truth. Within days of receiving the complaint, the two senior most career employees that work Hatch Act cases were consulted and reviewed almost every single speech that Ms. Rice gave over the prior year. They both concluded that the speeches were not in violation of the Hatch Act. Furthermore, the conclusion of the fact gathering and closure of the case (all by career staff) occurred within the normal timeframe for case handling. The complaint came to OSC on October 21, 2004, and the investigation and closure concluded on July 7, 2005.

Your letter of April 13, 2004, further refers to an incident that occurred at the Kennedy Space Center in Florida where John Kerry held a partisan rally for his presidential election on federal property where federal employees worked. The Complaint that you reference alleges that I gave the Kennedy Space Center case undue attention and hastened the investigation. You are trying to compare this case to the Rice case, in that I was allegedly too slow to investigate the Rice case. Yet there was not a single interview at the Kennedy Space Center until nearly three months after the complaint came to OSC. This was even after the initial inquiry by career

staff showed that there was a likely violation. The OSC complaint on this case was opened on July 29, 2004. Furthermore, the case was not looked into as a violation of the Hatch Act by John Kerry. He was not covered by the Act. The investigation concerned serious potential Hatch Act violations by the head of the Kennedy Space Center. It is unknown what that person's political affiliation is. The investigation is not due to end until probably early 2006.

In summary, the Complaint that you cite misrepresents these two cases by taking the facts out of context and is unfair to the professional career employees that dedicate themselves to enforcing the law.

One of the important provisions of the Hatch Act is its prohibition on the use of "official authority" to influence the outcome of a partisan election. I ask you to refer to 5 U.S.C. §§ 1502 (a)(1)-(2). Federal officials are forbidden to use their authority to try to influence the outcome of an election because nothing could be more partisan than using one's position in a way that denigrates the public trust in that manner. Any allegation of this magnitude, such as that presented by your filing complaints on Condoleezza Rice and Secretary Ann Veneman (had we known such was sent by you to our office), filed so close to a partisan election, could conceivably cause a reasonable observer to conclude a violation of the spirit of this prohibition occurred. It is plausible that these allegations could make their way into the media and adversely affect an election, even though later review would conclude that the allegations were baseless. In this regard, OSC must remain ever vigilant. OSC must never be used as a tool for election activity. I say this only to demonstrate the balancing test we must go through to conduct timely and lawful investigations. That is why no allegations of violation of the Hatch Act by members of the Administration or involvement in such were put into a press release or rushed to conclusion in anticipation of the election, and why I will never allow such to occur on my watch.

I hope this helps you to understand what actually occurred in these cases. Thank you for contacting the Office of Special Counsel.

Sincerely,



Scott J. Bloch
Special Counsel